

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8504 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

JYOTIBEN AMRUTBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY for Petitioner
MR. V.B. GHARANIA, ASSTT.GOVERNMENT PLEADER
for Respondent Nos. 1, 2 and 3.
MR DA BAMBHANIA for Respondent No. 4
SERVED BY DS for Respondent No. 5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/09/97

ORAL JUDGEMENT

The petitioner before this Court is the widow of one Shri Amrutlal B. Patel. Said Shri Patel was serving

as an Assistant Teacher since 10th June, 1952 and retired from service as the principal of the respondent no. 5 school on 31st October, 1988 and he died on 26th September, 1995. It is the claim of the petitioner that upon appointment of late Shri Patel as a principal his pay was rightly fixed at Rs. 1120/- in the pay scale of Rs.650-1200 and was wrongly reduced to Rs. 650/- i.e. to the minimum of the payscale. She has further contended that inspite of long service of Shri Patel as an Assistant Teacher/principal of secondary school neither late Shri Patel was paid pension nor any other retirement benefits nor the petitioner has been paid family pension to which she is lawfully entitled. Feeling aggrieved, the petitioner has preferred this petition.

2. The petitioner has prayed that pay of late Shri Patel on his appointment as a principal in respondent no. 5 school be fixed at Rs. 1120/- and family pension of late Shri Patel be accordingly paid and the petitioner be paid arrears of pension due and payable to late Shri Patel and she also be paid family pension since the date of demise of late Shri Patel.

3. On perusal of the record, it appears that late Shri Patel served as an Assistant Teacher from 10-6-1952 to 13-6-1954 in Shahpur Tutorial High School, Ahmedabad. He thereafter served as an Assistant Teacher in Navchetan High School, Ahmedabad from 1-7-1954 to 14-6-1959 and in Asarwa Vidyalaya, Ahmedabad from 15-6-1959 to 11-6-1961. Thereafter, late Shri Patel on 12-6-1991 was appointed as principal of Gujarat Vidyalaya, Ahmedabad. He served as such from 12-6-1961 to 19-2-1978. The said school was closed with effect from 20-2-1978. Last pay received by late Shri Patel in the said school was Rs. 1120/-. The petitioner thereafter on 24-6-1986 was appointed as a principal in respondent no. 5 school and his pay was fixed at Rs.1120/-. In view of long break in his service from 20-2-1978 to 23-6-1986 fixation of late Shri Patel's pay at Rs.1120/- was objected to. It was the view of the respondents authorities that in view of break in the service of late Shri Patel the last pay received by him in Gujarat Vidyalaya, Asarwa should not have been protected and his pay ought to have been fixed at minimum in the pay scale of Rs. 650-1200. The decision of the respondents authorities was challenged by late Shri Patel before the Gujarat Secondary Education Tribunal and the Tribunal under its order dated 26th December, 1988 held that it had no jurisdiction to entertain the matter at issue and the plaint was returned to late Shri Patel. Late Shri Patel thereafter on 1-1-1989 made a

representation before the Director of Higher Education and the Director of Higher Education under its order dated 10th April, 1989 rejected the claim made by late Shri Patel. The Director of Higher Education had considered the precedents cited by late Shri Patel and also the relevant Government Resolutions and had rejected the claim made by late Shri Patel. Feeling aggrieved, late Shri Patel on 1-5-1989 preferred an appeal before the Government. Said appeal too has been rejected by the Government under its order dated 14-9-1989. It appears that after rejection of the claim made by late Shri Patel by the Government the matter was not pursued further by Shri Patel except by making representations to the various authorities. Thus, the order made by the Director of Higher Education and the Government on appeal have become final.

4. After the demise of late Shri Patel on 26th September, 1995 the petitioner who is the widow of late Shri Patel has raised the very issue by preferring this petition under Article 226 of the Constitution of India. In my view, the petition for the said relief is not maintainable. The orders made against late Shri Patel by the Director of Higher Education and the State Government have become final as aforesaid. The Government has dismissed the appeal preferred by Shri Patel and said decision was communicated to late Shri Patel vide letter dated 10-4-1989. Late Shri Patel did not think it fit to pursue the matter further. The petitioner can not now re-agitate the issue after a lapse of more than seven years after the Government rejected the claim of late Shri Patel and after the death of late Shri Patel. The right to receive salary is a right in personam and since late Shri Patel did not agitate the issue before any Court of law the present petitioner has no locus standi to raise the dispute after the death of late Shri Patel.

5. Similarly, right to receive pension is also a right in personam. Late Shri Patel does not appear to have claimed right to receive pension in his life time. The petitioner, therefore, can not be permitted to raise such a claim after the death of late Shri Patel. As far as the petitioner's claim to receive family pension is concerned, I am informed by the learned Assistant. Govt. Pleader Mr. Gharania that the respondent no. 5 has not prepared such claim and has not forwarded the same to the competent authority under the Government.

6. The respondent no. 5 is not represented before me. The petition, therefore, requires to be allowed in so far as it relates to the claim for family pension that

may be admissible to the petitioner. It is, therefore, directed that the respondent no. 5 shall prepare claim for family pension made by the petitioner and forward it to the competent authority under the Government within a period of three weeks from the date of receipt of a copy of this order. The competent authority under the Government after receipt of the pension papers shall process the same and make necessary order in accordance with law within a period of ten weeks from the date of receipt of the same. Necessary payment of arrears of family pension admissible to the petitioner shall be paid to the petitioner as expeditiously as possible. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs. Registry is directed to send writ of this order forthwith.

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